

Arjunlal Bhatt Mall Gothani and Others

Vs

Girish Chandra Dutta and Another

Civil Appeal No. 1472 of 1967

(D.G. Palekar, A. Alagiriswami JJ)

03.05.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal is by special leave from the judgment of the High Court of Assam and Nagaland. The defendants are the appellants. The fact giving rise to the appeal are as follows.

2. There were four rooms in a land of an extent of 18 lossas belonging to the plaintiff's father, in one of which the defendants were tenants since 1922 on an annual rent of Rs. 410/-. In 1942 they took another room on rent agreeing to pay Rs. 425/- a year. According to the defendants they built a double storeyed building at a cost of about twenty-six thousand rupees behind the above-mentioned four rooms with the consent of the plaintiff's father, who was also the appellants' attorney. Subsequently the plaintiff's father made a gift of this property in favour of his son, the plaintiff. The plaintiff's father had filed a suit against the appellants for certain sums due to him from the appellants. He had also filed a petition for declaring them insolvents. The plaintiff himself had filed a suit in the Sub-Judge's Court at Jorhat T.S. No. 14 of 1958 for eviction of the appellants from suit lands and premises. On June 7, 1959, an agreement was entered into between the appellants and the 1st respondent under which the 1st respondent agreed to sell the whole property to the appellants for a sum of Rs. 80,000/- to be paid to him by annual instalments of Rs. 10,000/- on March 31 of each year, the first instalment being payable on March 31, 1960. As soon as the purchaser paid Rs. 40,000/- the vendor was to execute a sale deed for half the land and half the building. If the balance of Rs. 40,000/- was paid in equal annual instalments by March 31 of each year and the entire amount paid within eight years the vendor was to execute a sale deed for the remaining half. The most important clause of this agreement which it would be useful to extract in full reads :

"5. That in case of default of any instalment, this agreement for sale shall stand cancelled and if the purchasers fail to pay the defaulted instalments within one month's notice the payments made shall stand forfeited and the purchasers shall make over possession of the land and houses shown in Schedule to the vendor."

3. As a result of this agreement all the three proceedings against the appellants started by the respondent and his father were withdrawn. The first instalment was not paid on March 31, 1960. Instead the appellants filed a petition before the Subordinate Judge at Jorhat on March 31, 1960, stating that the plaintiff could not be found and wanted to be permitted to deposit the sum of Rs. 10,000/- in Jorhat Treasury to the credit of plaintiff. But even by June 2, 1960, no Treasury challan had been submitted by them. Instead they filed a petition stating that they had not deposited Rs. 10,000/- as the plaintiff had asked them not to do so and prayed for keeping the petition on file.

4. Thereafter the respondent filed a suit out of which this appeal arises for possession of the land together with the buildings. The defendants contended that the terms of the agreement were unconscionable and obtained by putting undue pressure, that the suit had been filed even without notice. The learned Subordinate Judge, who tried the suit held that the agreement was not obtained by fraud and coercion nor was it illegal and the plaintiff was entitled to possession as well as the declaration of his right and title in the suit properties. This judgment was upheld by the High Court of Assam and Nagaland. With regard to clause (5) mentioned above the High Court held that :

"The requirement of one month's notice is only in case where there is a default for payment of instalments and the purchaser wants to avoid forfeiture of the money which has already been paid under the agreement. There is nothing in clause (5) which enjoins upon the vendor to give one month's notice before he can bring a suit for possession."

It also held that :

"If a default is committed in payment of any instalments, the agreement stands cancelled and if the defendant fails to pay the defaulted instalments within one month of the notice, the money already paid will stand forfeited. The result of the agreement being cancelled is that the purchaser will deliver back possession of the premises to the vendor."

5. We are satisfied that both the Courts below have arrived at the correct conclusion that there is no evidence at all to justify an inference that the agreement in question was obtained from the appellants under undue influence or coercion. None of the instalments were paid as agreed upon. The application made by the appellants on March 31, 1960, as well as the application made subsequently are patently dishonest attempts at avoiding payment of the instalments as agreed upon. Under clause (5) of the agreement the question of giving notice arises only if the vendor wanted to forfeit the instalments paid by the purchaser. Not even one instalment having been paid the question of forfeiture does not arise and no notice was necessary for cancelling agreement. It stood automatically cancelled. It was sought to be argued before us that once the agreement stood cancelled the appellants stood restored to their original position as tenants and the suit could not be filed without giving notice under the Transfer of Property Act. We are of opinion that when the agreement, dated June 7, 1959, was entered into the old relationship of landlord and tenant came to an end. The rights and liabilities of the parties have to be worked out on the basis of that agreement. This is obvious from the fact that there was no provision for payment of any rent till the whole purchase money was paid or even for the balance of the purchase money that may be due after one or more instalments were paid. There was no provision even for payment of interest in respect of the whole of the purchase money or any of the instalments. Therefore, when the agreement stood cancelled the plaintiff was automatically entitled to possession under the terms of the agreement.

6. Even otherwise it has to be noticed that before T.S. No. 14 of 1958 was filed the plaintiff had actually given notice terminating the tenancy and asking for possession and that suit was withdrawn consequent on the agreement entered into between the parties on June 7, 1959. If the appellants want to go back to the position as tenants that notice should still be held to hold the filed. The appellants cannot be allowed to take advantage of their own wrong.

7. It was further urged before us that the appellants were entitled to certain rights under the Assam Tenancy Act. The only statement of the appellants in their written statement was that they were

protected under the tenancy Law from eviction for having permanent structure on the land with consent, knowledge and acquiescence of the plaintiff and his father for many years past. The Courts below have not found that the appellants had put any permanent structures on the land with the consent, knowledge and acquiescence of the plaintiff and his father. It is not mentioned under what tenancy Law the appellants were entitled to be protected against eviction. In any case they do not claim that the tenancy Law gave them any rights over the land. Such an argument does not seem to have been advanced before the trial court or before the High Court. We, therefore, refused to allow that argument to be raised. It is a case wholly without merits.

8. The appeal is dismissed; the appellants will pay the 1st respondent's costs.

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